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November 9, 2005

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ENVIR. APPEALS BOARD

VIA OVERNIGHT MAIL

Eurika Durr, Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1321 G Street, NW, Suite 600
Washington, D.C. 20005

Re: Indeck-Elwood, LLC
Permit No. 197035AAJ
PSD Appeal No. 03-04

Dear Ms. Durr:

Enclosed please find the original and five copies of the Motion of Openlands For Leave To File A Brief As Amicus Curiae in Support of Petitioners and the original and five copies of the Brief of Openlands As Amicus Curiae in Support of Petitioners for filing in the above-captioned matter. Copies of these documents have been served upon the Petitioner and Respondent of record in accordance with the enclosed Certificate of Service.

Please call me (312) 863-6265, if you have any questions regarding these materials.

Sincerely,


Jeremy R. Hojnicky

cc: Robb H. Layman
Bruce Nilles
Bertram C. Frey
James Schneider
Keith Harley
Verna Owen
Ann Brewster

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

IN THE MATTER OF:)
)
INDECK-ELWOOD, LLC) PSD APPEAL NO. 03-04
PSD PERMIT NUMBER 197035AAJ)

NOTICE

To:

Eurika Durr,
Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

Bertram C. Frey,
Acting Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency,
77 W. Jackson Boulevard
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Bruce Nilles
Sierra Club
200 N. Michigan Avenue, Suite 505
Chicago, Illinois 60601

James Schneider
Indeck-Elwood LLC
600 N. Buffalo Grove Road
Buffalo Grove, Illinois 60089

Kcith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, Illinois 60606

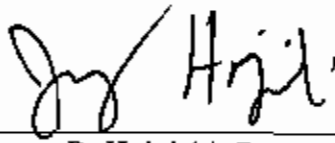
Verena Owen
Lake County Conservation Alliance
421 Ravine Drive
Winthrop Harbor, Illinois 60096

Robb H. Layman
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Ann Brewster
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, Massachusetts 02108

PLEASE TAKE NOTICE that today I have filed with the Clerk of the Environmental Appeals Board the original (1) and five (5) copies of a **MOTION OF OPENLANDS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS** and **BRIEF OF OPENLANDS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS**, a copy of which is herewith served upon you.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "J. Hojnicky". The signature is written in a cursive style with a horizontal line underneath it.

Jeremy R. Hojnicky, Esq.
Attorney No. 6280230
On Behalf of Openlands

Dated: November 9, 2005
Openlands
25 East Washington Street #1650
Chicago, Illinois 60602
(312) 863-6265

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2005, I did send copies of the foregoing **Motion Of Openlands For Leave To File A Brief As *Amicus Curiae* In Support of Petitioners** and **Brief of Openlands as *Amicus Curiae* In Support of Petitioners** in the matter of Indeck-Elwood, L.L.C., PSD Appeal No. 03-04 to the following persons:

By Overnight Mail to:

Eurika Durr,
Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

By First Class Mail to:

Bertram C. Frey
Acting Regional Counsel
Office of Regional Counsel, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604

Robb H. Layman
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Bruce Nilles
Sierra Club
200 N. Michigan Avenue, Suite 505
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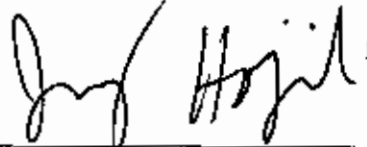
Verena Owen
Lake County Conservation Alliance
421 Ravine Drive
Winthrop Harbor, IL 60096

Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606

James Schneider
Indeck Ellwood LLC
600 N. Buffalo Grove Road
Buffalo Grove, IL 60089

Ann Browster
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108

Dated: November 9, 2005



Jeremy R. Hojnicky, Esq.
Attorney No. 6280230
On Behalf of Openlands

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF:)	
)	
INDECK-ELWOOD, LLC)	PSD APPEAL NO. 03-04
PSD PERMIT NUMBER 197035AAJ)	

MOTION OF OPENLANDS FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

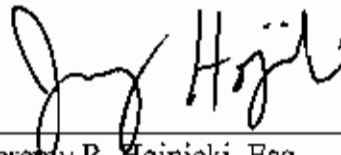
Pursuant to 40 C.F.R. § 124.19 and the Environmental Appeals Board Practice Manual § III.D.7, Openlands (formerly known as Openlands Project) respectfully moves the Environmental Appeals Board for leave to file the accompanying brief as *amicus curiae* supporting the petition for review filed by the American Lung Association of Metropolitan Chicago, Citizens Against Ruining the Environment, the Clean Air Task Force, Lake County Conservation Alliance and the Sierra Club ("Petitioners"). The petition for review challenges the decision by the Illinois Environmental Protection Agency ("IEPA") to issue a Prevention of Significant Deterioration ("PSD") permit to Indeck-Elwood, LLC ("Indeck") for the construction of a 660-megawatt coal-burning power plant in Elwood, Illinois, immediately adjacent to the 19,000 acre Midewin National Tallgrass Prairie.

Founded in 1963, Openlands is a non-profit member-based corporation dedicated to preserving and enhancing public open space in the greater Chicago metropolitan region. Openlands was a primary partner in the establishment of the Midewin National Tallgrass Prairie, the largest protected open space in northeastern Illinois and the first

national tallgrass prairie preserve in the United States. An important function of Openlands continues to be the protection of the Midewin.

Openlands' accompanying brief as *amicus curiae* describes the value of the Midewin National Tallgrass Prairie and explains the importance of allowing the public to comment on the new information that has come to light as part of the Endangered Species Act consultation process. The consultation process produced volumes of new information on the adverse and potentially irreparable environmental impacts that Indeck's proposed project will have on the Midewin. The public never had a chance to review and provide valuable input on this new information because the consultation process was not completed until after the comment period for this permit was closed. Accordingly, Openlands respectfully requests this Board to review the enclosed *amicus* brief and to consider it when issuing a decision in this matter.

Respectfully submitted by,



Jeremy R. Hojnicky, Esq.
Attorney No. 6280230
On behalf of Openlands

Dated: November 9, 2005
Openlands
25 East Washington Street #1650
Chicago, Illinois 60602
(312) 863-6265